

No. 79-657

Supreme Court, U.S.

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MICHAEL ROBAK, JR., CLERK

In the Supreme Court of the United States

OCTOBER TERM, 1979

AD HOC COMMITTEE TO INVESTIGATE
THE FEDERAL GRAND JURY, PETITIONER

v.

HARRY KOCH

ON PETITION FOR A WRIT OF CERTIORARI TO
THE UNITED STATES COURT OF APPEALS FOR
THE FIFTH CIRCUIT

MEMORANDUM FOR THE RESPONDENT
IN OPPOSITION

WADE H. McCREE, JR.
Solicitor General
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Washington, D.C. 20530

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Petitioner filed this \$30 million damages suit against respondent, an Assistant United States Attorney, alleging that respondent had engaged in improper conduct in the course of a criminal trial. Petitioner claimed that the prosecutor had "prosecuted the matter due to his desire to force [the defendant] to sell his business and property at a loss, that he prosecuted the matter in bad faith *** and that he interfered with the counsel of [the defendant]" (Pet. 2-3). Relying on *Imbler v. Pachtman*, 424 U.S. 409 (1976), and *Yaselli v. Goff*, 12 F. 2d 396 (2d Cir. 1926), aff'd *per curiam*, 275 U.S. 503 (1927), the United States District Court for the Northern District of Texas dismissed the complaint (Pet. App. A). The court of appeals affirmed without opinion (Pet. App. B).

In *Imbler v. Pachtman, supra*, 424 U.S. at 430, this Court held that prosecutors are absolutely immune from suits alleging constitutional violations based on activities that are "intimately associated with the judicial phase of the criminal process * * *." Petitioner's contention that certain international agreements abrogate this immunity is without merit. With the exception of the American Convention on Human Rights, 78 Dep't State Bull. 28 (July 4, 1977), the agreements cited by petitioner (Pet. 4-5) are not treaties and are not judicially enforceable. The American Convention on Human Rights, while it is a treaty, is not self-executing, and confers no judicially enforceable rights. Cf. *Foster v. Neilson*, 27 U.S. (2 Pet.) 253 (1829). In any event, no provision in any of the cited agreements purports to abrogate a prosecutor's absolute immunity from damage suits.

It is therefore respectfully submitted that the petition for a writ of certiorari should be denied.

WADE H. McCREE, JR.
Solicitor General

DECEMBER 1979